IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 333 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA P SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR DK NAKRANI for Petitioner

MR SAMIR DAVE APP for Respondent No. 1, 2 & 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/12/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner by this petition under Article 226 of the Constitution of India praying for order or direction

quashing and setting aside the impugned action dated 31.1.1999, 21.2.1999 and 18.3.1999 for compounding offence as per Annexure A collectively. It is further prayed for direction to the respondents not to collect any composition fees for the alleged breach of permit condition, and alleged offence under section 192A of the Motor Vehicles Act, 1988 in due compliance with this Hon'ble Court's decision reported in 1997(1) GLR page 289.

#. Second prayer has been made for direction to the respondents from collecting composition fees for alleged contravention of permit condition and alleged offences under Section 192A of the Motor Vehicle Act, 1988 pending admission and final disposal of this petition.

#. It is not in dispute that under the orders dated 31.3.1999, 21.2.1999 and 18.3.1999 the alleged offences committed by the petitioner for the violation of condition of the permit have been compounded. The leaned counsel for the petitioner contended that the offences which have been committed by the petitioner are not compoundable and it could not have been ordered to be compounded by the respondents. Second contention raised that the respondents have forcibly got this offence compounded by the petitioner. Both the contentions raised by the learned counsel for the petitioner are de void of any substance. If the offences are not compoundable and the petitioner compound the same for which this petition filed by him is wholly misconceived. It is a criminal matter where the petitioner could have approached to the learned Sessions Court by filing revision application under Section 397 of the Criminal Procedure Code, 1973. Secondly, otherwise also in this case estoppel or waiver may be attracted and once the petitioner has compounded the alleged offences irrespective of the fact whether it is compoundable or not no grievance can be made by him. Possibly knowing this weakness of the case the learned counsel for the petitioner would have raised the second contention. Whether the respondent got forcibly these matters compounded by the petitioner is a question of fact. The respondents have not admitted this position and for this question of fact this remedy under Article 226 of the Constitution of India is wholly misconceived a

misplaced. For this also the petitioner has remedy to approach to the appropriate redressal forum available i.e. either to file criminal case against the offenders concerned and second to file suit for declaration.

#. As a result of the aforesaid discussion no relief of the nature as prayed for in this petition can be granted to the petitioner.

#. In the result, this Special Criminal Application fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated. No order as to costs.

(S.K.Keshote, J.)
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